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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DMR

CV 13 4899

Wei-Chuan U.S.A., Inc., and Yi-Jie) Agency Case No.: WAC-13-142-50525
)
Lin,) COMPLAINT FOR DECLARATORY AND
) INJUNCTIVE RELIEF
)
Plaintiffs,)
)
v.)
)
Eric Holder, United States)
Attorney General; Rand)
Beers, Acting Secretary of Homeland)
Security; Alejandro Mayorkas,)
Director, United States)
Citizenship and Immigration)
Services; Kathy Baran, Director,)
California Service Center United)
States Citizenship and Immigration)
Services,)
Defendants.

This action arises out of the constitutional, statutory, and
regulatory violations committed by the Defendants. Plaintiff Wei-Chuan
U.S.A., Inc., (hereinafter "Wei-Chuan"), by and through the
undersigned counsel, hereby respectfully asks this Honorable Court to
issue a judicial declaration invalidating the decision of Defendants
Eric Holder ("Defendant Holder"), Rand Beers ("Defendant Beers"),

Alejandro Mayorkas ("Defendant Mayorkas") and Kathy Baran ("Defendant Baran") (hereinafter collectively "Defendant") to deny Plaintiff Wei-Chuan's I-129 Petition to classify Ms. Yi-Jie Lin as an H-1B temporary specialty occupation nonimmigrant worker.

Defendant's decision was "arbitrary and capricious" and was in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. §706(2)(A). This provision of the APA provides that a court reviewing an agency action shall "hold unlawful and set aside agency action, findings, and conclusions found to be... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" In support of this complaint, Plaintiff allege as follows:

1. Section 101(a)(15)(H)(i)(b) of the Immigration & Nationality Act ("INA"), 8 U.S.C. §1101(a)(15)(H)(i)(b) provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation. The United States Supreme Court has held that an agency must engage in "reasoned decision-making." *Judulang v. Holder*, 132 S.Ct. 476(2011). A court can review whether the decision was based on "a consideration of the relevant factors" and whether "there has been a clear error of judgment." *Id.* at 484. That review requires looking at the quality of the agency's reasoning (or lack thereof).

2. Plaintiff Wei-Chuan, needing a Management Information Systems Specialist (a Database Administrator), sought to obtain an H-1B visa for Plaintiff Lin, who had the necessary education and skills to perform the job. Plaintiff Lin, who was in valid nonimmigrant F-

1 (Student) status, holds the foreign equivalent of a bachelor's degree
2 in Management Information Systems and wished to work for Wei-Chuan as
3 a temporary specialty worker.

4 3. The United States Citizenship and Immigration Services
5 ("USCIS") denial of the petition and change of status/extension of
6 stay has harmed Plaintiff Wei-Chuan because Plaintiff Lin was hired to
7 fill a critical position within the company. Plaintiff Lin has been
8 harmed by the denial of her change of status from F-1 international
9 student to H-1B Specialty Occupation Worker as she has lost her lawful
10 nonimmigrant status for unlawful reasons.

12 **PARTIES**

13 4. Plaintiff Wei-Chuan is a U.S. corporation, founded in Los
14 Angeles in 1972. It is a manufacturer of frozen foods that are sold
15 both to the consumer and to restaurants. In addition to its Los
16 Angeles plant, it has warehouses and wholesale branches in New Jersey,
17 Los Angeles San Francisco, Chicago, Houston, and Atlanta. It currently
18 employs over 300 employees and has just expanded to a new plant in
19 Rutherford County, Tennessee. This expansion in manufacturing
20 operations will result in the hiring of an additional 317 employees.
21 Its revenues exceed \$100 million annually.

22 5. Plaintiff Lin is a citizen of Taiwan. In June 2007 she
23 completed the course of study in the Department of Information
24 Management and was conferred the degree of Bachelor of Business
25 Administration by the Nanya Institute of Technology in Jhongli,
26 Taiwan. This degree was evaluated by a professional educational
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1 credential evaluator as the equivalent of a bachelor's degree in
2 Management Information Systems from a regionally accredited college or
3 university in the United States. She additionally completed a one-year
4 post-graduate certificate program in Business Administration at the
5 University of California Extension, Santa Cruz in Santa Cruz,
6 California.

7
8 6. Defendant Holder is the Attorney General of the United States,
9 and he is responsible for the Department of Homeland Security
10 ("DHS")'s implementation and enforcement of the INA.

11 7. Defendant Beers is the Acting Secretary of the Department of
12 Homeland Security ("USDHS"), and responsible for the administration of
13 the USCIS, as well as the implementation and enforcement of the INA.

14 8. Defendant Mayorkas is the Director of USCIS, a component
15 within the USDHS, and is responsible for the overall administration of
16 USCIS and the implementation of the immigration laws that pertain to
17 non-immigrant visa petitions, including adjudicating H-1B visa
18 petitions filed by employers on behalf of intended employees
19 ("beneficiaries") in specialty occupations.
20

21 9. Defendant Baran is the Director of the California Service
22 Center, the division of USCIS responsible for the adjudication of the
23 H-1B petition at issue in this action.

24 JURISDICTION AND VENUE

25 10. This action arises under a federal statute, 8 U.S.C. §1184.
26 Honorable Court has original jurisdiction over this action under 28
27 U.S.C §1331 because it arises under the constitution, laws, and
28

1 treaties of the United States. Agency actions are reviewable under
2 federal question jurisdiction, pursuant to 28 U.S.C. 17049 § 1331 and
3 reinforced by the enactment of the Administrative Procedure Act
4 ("APA"), even if no statute specifically authorizes judicial
5 review. *Reno v. Catholic Soc. Serv., Inc.*, 509 U.S. 43, 56-57, 113
6 S.Ct. 2485, 125 L.Ed.2d 38 (1993). See, also *Spencer Enterprises, Inc.*
7 *v. United States*, 345 F.3d 683, 687-88 (9th Cir.2003)

8
9 11. This Honorable Court has jurisdiction over this action
10 under 28 U.S.C §2201, the Federal Declaratory Judgment Act.

11 12. This Honorable Court has jurisdiction under Administrative
12 Procedures Act ("APA"), 5 U.S.C. §702, because this action arises from
13 a legal wrong that resulted from an agency action.

14 13. The Honorable Court also has jurisdiction over this action
15 under APA, 5 U.S.C. §§704 and 706, a final agency determination that
16 was not in accordance with the law.

17 14. The Honorable Court clearly has jurisdiction over denial of
18 petitions for H-1B nonimmigrant visas for individuals working in
19 temporary specialty occupation positions. *Shanti, Inc. v. Reno*, 36 F.
20 Supp.2d 1151, 1160-1161 (D. Minn. 1999). The definition of "specialty
21 occupation" upon which the USCIS denial depended (codified at
22 Immigration and Nationality Act Section 214(h)) constitutes a legal
23 standard the meaning of which the Court retains jurisdiction to
24 clarify. *Ana International Inc. v. E. Way*, 393 F. 3d 886 (9th Cir.
25 2004).

26
27 15. Venue lies in the United States District Court for the
28

1 Northern District of California, Oakland Division, the judicial
2 district in which the proffered job is located. 28 USC §1391(e).

3
4 **STATEMENT OF THE FACTS**

5 16. Plaintiff Wei-Chuan requires the temporary services of a
6 Management Information Systems ("MIS") Specialist in order to install,
7 program, and configure the company's management information systems to
8 process transaction data including accounting, sales, procurement,
9 inventory control, and logistics coordination. This Specialist would
10 also need to analyze business transaction types and needs of
11 information processing and to design databases for tasks of report
12 generation, sales and inventory data storage, retrieval and intra-
13 departmental transmittal. The MIS Specialist would also set up and
14 upgrade telecommunication software applications for the company's
15 management information system for intra-company and corporate
16 communications with suppliers, domestic wholesalers and other vendors.

17 17. On April 1, 2013, Wei-Chuan filed an I-129 nonimmigrant visa
18 petition with USCIS in order to classify Ms. Yi-Jie Lin, Beneficiary,
19 as a specialty occupation worker so that she could perform the duties
20 of the MIS Specialist for them. The petition requested not only a
21 change of status for Ms. Lin from F-1 international student to H-1B
22 specialty worker, but also sought to extend her lawful stay in the
23 United States for a period of three years.

24 18. Section 101(a)(15)(H)(i)(b) of the Immigration and
25 Nationality Act ("INA") describes a temporary specialty worker as an
26 alien coming to the United States temporarily to work in a "specialty
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1 occupation described in section 214(h)(1)." INA Section 214(h)(1)
2 defines "specialty occupation" as "an occupation that requires-(A)
3 theoretical and practical application of a body of highly specialized
4 knowledge, and(B) attainment of a bachelor's or higher degree in the
5 specific specialty (or its equivalent) as a minimum for entry into the
6 occupation in the United States."
7

8 19. Plaintiff Wei-Chuan stated in its petition and supporting
9 documents that the Management Information Systems Specialist requires
10 a Bachelor's degree in Management Information Systems or Computer
11 Information Systems or the equivalent.

12 20. In order to obtain an approval of an H-1B petition, an
13 approved Labor Conditions Application ("LCA") must be filed in
14 conjunction with the I-129 petition, showing the occupation, place of
15 employment, the dates of employment, and the salary. The salary must
16 be at least the prevailing wage for that occupation. The occupation is
17 chosen from a list of occupations found in the government's Standard
18 Occupational Classification ("SOC") system. Every occupation title in
19 the SOC has its own SOC code.
20

21 21. Not every job title has an SOC occupational title or code.
22 One must locate the SOC occupation title whose job description most
23 closely matches that of the position for which an H-1B specialty
24 worker is being sought.

25 22. After doing a search for the most appropriate SOC occupation
26 title by perusing both the SOC occupation descriptions and the
27 Department of Labor's Occupational Outlook Handbook ("OOH"),
28

Petitioner Wei-Chuan chose the SOC occupation title: "Database Administrators, SOC Code 15-1141" which also covers the occupation "Information Scientist."

23. The job duties listed in the OOH job description for Database Administrators are as follows:

- Identify user needs to create and administer databases
- Ensure that the database operates efficiently and without error
- Make and test modifications to the database structure when needed
- Maintain the database and update permissions
- Merge old databases into new ones
- Backup and restore data to prevent data loss

24. The job duties listed in the SOC occupation description for Database Administrators are as follows:

- Test programs or databases, correct errors and make necessary modifications.
- Modify existing databases and database management systems or direct programmers and analysts to make changes.
- Plan, coordinate and implement security measures to safeguard information in computer files against accidental or unauthorized damage, modification or disclosure.
- Work as part of a project team to coordinate database development and determine project scope and limitations.
- Write and code logical and physical database descriptions and specify identifiers of database to management system or direct others in coding descriptions.
- Train users and answer questions.
- Specify users and user access levels for each segment of database.
- Approve, schedule, plan, and supervise the installation and testing of new products and improvements to computer systems such as the installation of new databases.
- Review project requests describing database user needs to estimate time and cost required to accomplish project.
- Develop standards and guidelines to guide the use and acquisition of software and to protect vulnerable information.

1 25. On May 23, 2013, USCIS responded with a Request for Evidence
2 ("RFE"). The RFE stated that it did not believe the proffered position
3 to be a specialty occupation and requested further documentation to
4 show that it is in fact a specialty occupation. No details were given
5 as to why USCIS did not believe the position to be a specialty
6 occupation.

7
8 26. Specifically, USCIS requested: 1) a more specific job
9 description, including a breakdown of how time would be spent on each
10 job duty, 2) proof that an "industry-related professional association"
11 has recognized that public relations specialists require a bachelor's
12 degree in a particular specialty as a minimum requirement to enter the
13 field 3) letters or affidavits from firms or individuals in the
14 industry that attest that firms similar to the petitioner's routinely
15 require that Public Relations Specialists acquire a bachelor's degree
16 4) Job listings for similar positions by similar companies 5) evidence
17 of past employment practices of Petitioner in the form of job
18 announcements 6) proof of the qualifications of any individual who
19 previously held this position with Plaintiff, 7) documentation about
20 the company including "company brochures, pamphlets, internet website,
21 press releases, business plans, promotional materials, advertisements,
22 patents, critical reviews, articles, photographs of prototypes, etc."
23 in order to establish that a bachelor's degree is required in order to
24 perform the duties of the position (although it is unclear how such
25 evidence would demonstrate the need for a degree), and 8) an
26 explanation as to how this position is more complex than "other
27
28

1 related 'non-specialty occupation' positions."

2 27. In response, Wei-Chuan, Inc. submitted: the U.S. Department
3 of Labor's Occupational Outlook Handbook ("OOH") description of the
4 required background for Database Administrators (as the OOH is the
5 USCIS "go-to" source for an occupation's educational requirements), an
6 extremely detailed job description, company information (which had
7 also been included in the initial filing), information from university
8 MIS programs discussing MIS careers, and ten job listings for similar
9 positions.
10

11 28. Because it is difficult to ascertain the income and number
12 of employees of the small businesses seeking accountants, as this
13 information is not generally posted in the ad nor is it a public
14 knowledge, a range of job listings was submitted.
15

16 29. On September 12, 2013, USCIS denied the petition and change
17 of status/extension of stay.

18 30. The basis for the denial was is that the position is not a
19 specialty occupation. Specifically it stated that:

20
21 "The beneficiary will be responsible for *installing and*
22 *programming the Company's management information systems*
23 *for processing business transaction data including sales,*
accounting, supply purchasing, inventory control and
logistics coordination...." (emphasis added)

24 31. USCIS then noted that the position includes many
25 responsibilities that are not specifically classified in the OOH and
26 opined:

27 "Because it appears that the beneficiary will be *primarily*
28 *maintaining the petitioner's existing computer systems,* and
will not mainly engage in duties of a degreed database

1 administrator, the proffered position does not seem to be
2 analogous to the position of a database administrator.
3 (*emphasis added*) Instead it appears that the duties of the
4 proffered position include some of the duties of Computer
5 Support Specialists, Database Administrators and Network
6 and Computer Systems Administrators. Further the proffered
7 position does not appear to be parallel to any position
8 that requires a minimum of a baccalaureate degree in a
9 specific specialty for entry into the position. It appears
10 that the proffered position requires a wide range of
11 skills; however, the skills required, appear to be general
12 skills that can be obtained through some formal education
13 or past work experience. There appears to be no requirement
14 that the education conform to a specific specialty. Indeed
15 it appears that any number of educational pursuits, and/or
16 work experiences would suffice, provided that supporting
17 coursework include various courses specific to the
18 proffered position."

19 32. USCIS then rejected all of the evidence that it had requested
20 noting that none of it proved that it was a specialty occupation.

21 ARGUMENT

22 33. The USCIS decision is completely arbitrary, capricious, and
23 irrational. Its own description of the proffered job is that
24 Beneficiary would be responsible for installing and programming a
25 large company's management information systems for various business
26 transactions. "Programming and installing" clearly is not the same as
27 "maintaining the Petitioner's existing systems."

28 34. Moreover, "maintaining existing systems" is not the main duty
listed in the Petitioner's job description. In the more detailed job
description submitted by Petitioner in response to the RFE, it
specifically states that Beneficiary will spend %20 percent of her
time maintaining the systems that she is designing, installing, and
programming.

35. Moreover, the OOH job description for Database Administrator

1 is almost an exact match to Beneficiary's proposed job description. It
2 is unclear, and USCIS does not even attempt to clarify, which of
3 Beneficiary's proposed job duties are not those of a Database
4 Administrator. Indeed all of her duties appear in both the OOH job
5 description for Database Administrators as well as the job duties
6 listed in the SOC occupation description.
7

8 36. It is also undisputed that Database Administrator is a
9 specialty occupation that requires, at minimum, a bachelor's degree in
10 Management Information Systems or Computer Information systems in
11 order to enter the profession.

12 37. The denial issued by USCIS was wholly capricious, arbitrary,
13 and irrational. It is completely unsupported by the evidence. On the
14 contrary, the evidence in the record directly contradicts the findings
15 made by USCIS.
16

17 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

18 38. USCIS' decision denying Plaintiff Wei-Chuan's H-1B petition
19 is a final agency action under 5 U.S.C. § 704 and ripe for judicial
20 review. 8 C.F.R. §214.2(h)(12) (permissive appeal of denial of
21 petition). No further exhaustion of administrative remedies is
22 mandated by statute or regulation, and no further permissive
23 administrative appeal may be required for actions brought under the
24 Administrative Procedures Act ("APA"). *Darby v. Cisneros*, 509 U.S.
25 137, 154 (1993).
26

27 39. Additionally, as a prudent matter, further intra-agency
28 appeal would result in manifest injustice and prejudice to Plaintiff.

1 Appeals to the Administrative Appeals Office ("AAO") typically take at
2 least a year, if not two years, before a decision is returned. During
3 that time, Plaintiff would be deprived of the opportunity to employ
4 Beneficiary and Beneficiary would need to wait abroad for the
5 resolution of this matter.

6
7 **FIRST CLAIM FOR RELIEF**
(Violation under Administrative Procedures Act)

8 40. The allegations set forth above in paragraphs 1 through 18
9 inclusive are incorporated into this cause of action by reference as
10 if set forth in full.

11 41. Defendant's decision to deny Plaintiff's petition is not
12 supported by the record and is therefore arbitrary and capricious
13 under the APA. The United States Supreme Court has held that an
14 agency must engage in "reasoned decision-making." *Judulang v. Holder*,
15 132 S.Ct. 476(2011). A court can review whether the decision was based
16 on "a consideration of the relevant factors" and whether "there has
17 been a clear error of judgment." *Id.* at 484. That review requires
18 looking at the quality of the agency's reasoning (or lack thereof).

19 WHEREFORE, Plaintiffs request the Honorable Court to invalidate
20 Defendant's decision to deny Plaintiff Wei-Chuan's petition to
21 classify Beneficiary as an H-1B Temporary Specialty Occupation Worker
22 on the ground that the position does not qualify as a Specialty
23 Occupation as defined in INA §214(h)(1).

SECOND CLAIM FOR RELIEF
(Injunctive Relief)

42. The allegations set forth above in paragraphs 1 through 20 inclusive are incorporated into this cause of action by reference as if set forth in full.

43. This is an action for injunctive relief against Defendant.

44. A bona fide dispute has arisen between Plaintiffs and the Defendant regarding the factual and legal sufficiency of the Defendant's decision to denying Plaintiff Wei-Chuan's I-129 petition and Plaintiff Lin's change of status and extension of stay and Plaintiffs have been prejudiced by the Defendant's decision.

WHEREFORE, Plaintiffs request that judgment be entered in favor of Plaintiffs and against Defendant, and that Defendant and any of Defendant's agents or other person for, with, by, through or under any of them:

(a) Be compelled to vacate Defendant's decision that denied Plaintiff Wei-Chuan's petition and Plaintiff Lin's change of status and extension of stay;

(b) be compelled to hold any and all such hearings to determine the sufficiency of the reasons relied upon by Defendant in finding that Plaintiff's petition was not approvable pursuant to 8 C.F.R. 214.2(h).

(c) That the Court awards all other such relief to Plaintiff as this Court deems just, proper and equitable.

THIRD CLAIM FOR RELIEF
(Declaratory Relief)

45. The allegations set forth above in paragraphs 1 through 23 inclusive are incorporated into this cause of action by reference as if set forth in full.

46. This is an action for declaratory relief pursuant to 28 USC §2201.

47. A bona fide dispute has arisen between Plaintiff and Defendant regarding the factual and legal sufficiency of the Defendant's decision to deny Plaintiff Wei-Chuan's petition, and Plaintiffs have been prejudiced by the Defendant's decision.

WHEREFORE, Plaintiffs request that judgment be entered in favor of Plaintiffs and against Defendant and the Court enter a judgment:

(a) declaring that the Defendant's decision to deny Plaintiff Wei-Chuan's petition was without basis in fact and law and contrary to and inconsistent with applicable statutes, regulations and operating instructions, as well as contrary to and inconsistent with the due process clause of the Fifth Amendment to the United States Constitution;

(b) declaring that the Defendant's decision was contrary to the law and was arbitrary and capricious;

(c) declaring that Defendant and any of Defendant's agents or other persons acting for, with, by, through or under any

1 of them, may not take any steps to enforce the effect of
2 this illegal decision;

3 (d) and that the Court award all other such relief to
4 Plaintiffs as this Court deems just, proper and equitable.
5

6 **FOURTH CLAIM FOR RELIEF**

7 **(Attorneys' Fees and Cost Pursuant to 28 USC §2412)**

8 48. The allegations set forth above in paragraphs 1 through 26
9 inclusive are incorporated into this cause of action by reference as
10 if set forth in full.
11

12 49. This is an action for attorneys' fees and costs pursuant to
13 the Equal Access to Justice Act ("EAJA"), 28 USC §2412.

14 50. If Plaintiff Wei-Chuan prevails in this action, it will be
15 eligible to receive an award under the EAJA, 28 USC
16 §2412(d)(1)(B), (2)(H).
17

18 51. The position of the Government was and is not substantially
19 justified under the EAJA, USC §2412(d)(1)(B).
20

21 WHEREFORE, Plaintiffs request that judgment be entered in its
22 favor and against Defendant and that the Court enter a judgment
23 awarding Plaintiff Wei-Chuan reasonable attorneys' fees and costs
24 pursuant to the EAJA, and the Court award all other such relief to
25 Plaintiffs as this Court deems just, proper and equitable.
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2 Dated this 10th day of October, 2013,
3

4 Respectfully Submitted,
5 SCHEIN & CAI, LLP



6 Love M. Macione
7 Attorney for Petitioner
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